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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,479

01/11/2007

Andrea Walter

3715

8416

278

7590

09/24/2010

MICHAEL J. STRIKER
103 EAST NECK ROAD
HUNTINGTON, NY 11743

EXAMINER

VENKAT, JYOTHSNA A

ART UNIT

PAPER NUMBER

1619

NOTIFICATION DATE

DELIVERY MODE

09/24/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

striker@strikerlaw.com

Office Action Summary	Application No. 10/579,479	Applicant(s) WALTER ET AL.	
	Examiner JYOTHSNA A. VENKAT	Art Unit 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/12/07</u> . | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Receipt is acknowledged of preliminary amendment filed on 5/16/06 and IDS filed on 1/11/2007. Claims 1-11 are pending in the application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 8-9 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

These claims are in improper Markush group format. Deletion of “among” is suggested to overcome the above rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of (US 6,716,455 or EP 1,287,810) and U. S. Patent 6,187,058 ('058).

EP 1,287,810 is the European counterpart to US 6,716,455. EP 1,287,810 and US 6,716,455 appear to have identical disclosures, for simplicity they will together be referred to hereinafter as "'455". While any reference hereinafter to column and line numbers will be based upon the US patent disclosure, such reference should be interpreted as including the corresponding disclosure of the aforementioned EP counterpart.

Patent '455 teaches hair treatment gels containing itaconic acid monoester/acrylate copolymer and under abstract teaches hair fixing gel that has special rheological properties so that it can be dispensed from container without dripping or becoming stringy using 1.5 to 10 % by weight of itaconic acid monoester/acrylate copolymer. This copolymer is claimed as component A and this meets claims 1-3 and 9. Patent '455 under paragraph bridging col.s 2-3 teaches that copolymer A is built from itaconic acid monoesters and also teaches acrylate monomers of copolymer A are preferably selected from acrylic acid. Patent at col.3, ll 4-12 teaches that the acid groups in the polymers are neutralized by neutralizing agents and this includes amino methyl propanol... potassium hydroxide. This meets limitation of claim 7. Patent at col.2, line 41 teaches pH having greater than 7 and at col.5, ll 6-10 teaches pH (claim 8). Patent at col.3, line 15 through line 65 teaches claimed fixing polymers of claims 1-2, 4 and 8-9. See col.3, ll 41-42 for homopolymers of vinyl caprolactam (claims 8-9). Patent at paragraph bridging col.s 4-5 teaches water and alcohol and under examples teaches water content which

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meets “at least 50%”. Patent under example 1 teaches hair gels using the claimed gel former of claim 8 also known as Carbomer. Patent at col.6, line 59 through col.7, line 40 teaches the limitation of claim 9.

The difference between the patent and instant application is with respect to components B known as water glass. Water glass is also known as silicates of potassium or sodium. Patent at col.3, ll 4-12 teaches that the acid groups in the polymers are neutralized by neutralizing agents and this includes *amino methyl propanol... potassium hydroxide* but not neutralized by neutralizing agent known as water glass.

Patent ‘058 teaches hair lightener and dyeing composition and teaches 50 percent of water and teaches sufficient amount of alkalizer for hair dyeing compositions. Patent at col.4, ll 20-34 teaches adding alkalizer in order to maintain the pH and this includes alkalizers commonly known in the industry and this includes *amino methyl propanol, sodium hydroxide and potassium hydroxide* taught by patent ‘455 to neutralize the acid groups in the gel polymer and patent ‘058 also teaches neutralizer sodium silicate also known as claimed water glass.

Accordingly, it would be obvious to one of ordinary skill in the art at the time the invention was made to prepare hair gel for hair treatment taught by patent ‘455 using the polymeric gel former, hair fixing polymer, water and pigments and substitute the neutralizer for neutralizing the acidic groups of gel former of patent ‘455 with another functional equivalent neutralizer like sodium silicate taught by patent '058 as commonly known neutralizers in the industry with the reasonable expectation of success that the hair treatment agent containing components A-D can also be used as hair fixing gels that has special rheological properties so

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that it can be dispensed from container without dripping or becoming stringy when applied to hair. This is a prima facie case of obviousness.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EYLER YVONNE (BONNIE) can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /
Primary Examiner, Art Unit 1619